

# EXHIBIT D

**From:** Wolfsohn, David J.  
**To:** [Montclare, Paul](#); [Williams, Matthew](#); [Lichtman, Leo](#); [Nguyen, Elaine](#)  
**Cc:** [Marandola, Tyler R.](#); [Inwek, Cheryl](#); [Hill, Kimberly A.](#)  
**Subject:** [EXTERNAL] RE: The Phillies v. H/E etc.: Discovery Schedule/Issues  
**Date:** Friday, June 26, 2020 11:30:42 AM  
**Attachments:** [Proposed Letter to Judge Netburn re proposed discovery deadlines\(12270474.1\).DOCX](#)

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-EXTERNAL MESSAGE-

Paul,

Looks good, except I changed the paragraph about our not having experts to make it clear that if you file a motion for injunctive relief or amend the pleadings to assert claims of infringement, etc., that would be a whole new ballgame, so to speak.

David

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**From:** Montclare, Paul <pdm@msk.com>  
**Sent:** Friday, June 26, 2020 11:02 AM  
**To:** Wolfsohn, David J. <DJWolfsohn@duanemorris.com>; Williams, Matthew <mxw@msk.com>; Lichtman, Leo <lml@msk.com>; Nguyen, Elaine <eln@msk.com>  
**Cc:** Marandola, Tyler R. <TMarandola@duanemorris.com>; Inwek, Cheryl <CInwek@duanemorris.com>; Hill, Kimberly A. <KAHill@duanemorris.com>  
**Subject:** RE: The Phillies v. H/E etc.: Discovery Schedule/Issues

Here is it is with the changes highlighted.



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**From:** Wolfsohn, David J. <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>  
**Sent:** Friday, June 26, 2020 10:42 AM  
**To:** Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>  
**Cc:** Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Inwek, Cheryl <[CInwek@duanemorris.com](mailto:CInwek@duanemorris.com)>; Hill, Kimberly A. <[KAHill@duanemorris.com](mailto:KAHill@duanemorris.com)>  
**Subject:** [EXTERNAL] RE: The Phillies v. H/E etc.: Discovery Schedule/Issues

-EXTERNAL MESSAGE-

Got it.

Could you please revise per our exchange and let me review one more time before submitting?

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**From:** Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)>

**Sent:** Friday, June 26, 2020 10:36 AM

**To:** Wolfsohn, David J. <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>

**Cc:** Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Inwek, Cheryl <[CInwek@duanemorris.com](mailto:CInwek@duanemorris.com)>; Hill, Kimberly A. <[KAHill@duanemorris.com](mailto:KAHill@duanemorris.com)>

**Subject:** RE: The Phillies v. H/E etc.: Discovery Schedule/Issues

David,

I was referring to your request in the proposed order for additional time to complete expert depositions if you decide to seek judicial intervention to get more documents prior to the depositions.

Paul



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**From:** Wolfsohn, David J. <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>

**Sent:** Friday, June 26, 2020 10:31 AM

**To:** Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>

**Cc:** Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Inwek, Cheryl <[CInwek@duanemorris.com](mailto:CInwek@duanemorris.com)>; Hill, Kimberly A. <[KAHill@duanemorris.com](mailto:KAHill@duanemorris.com)>

**Subject:** [EXTERNAL] RE: The Phillies v. H/E etc.: Discovery Schedule/Issues

-EXTERNAL MESSAGE-

I see your point about the contention interrogatories, but what additional expert disclosure are you referring to?

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**From:** Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)>  
**Sent:** Friday, June 26, 2020 10:17 AM  
**To:** Wolfsohn, David J. <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>  
**Cc:** Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Inwek, Cheryl <[CInwek@duanemorris.com](mailto:CInwek@duanemorris.com)>; Hill, Kimberly A. <[KAHill@duanemorris.com](mailto:KAHill@duanemorris.com)>  
**Subject:** RE: The Phillies v. H/E etc.: Discovery Schedule/Issues

Because July 10 th may not be the last day of expert disclosure and we still need to exchange contention interrogatories, I think we should close all discovery a week prior to the MSJ letter or July 20<sup>th</sup>, Ok?



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**From:** Wolfsohn, David J. <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>  
**Sent:** Friday, June 26, 2020 9:47 AM  
**To:** Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>  
**Cc:** Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Inwek, Cheryl <[CInwek@duanemorris.com](mailto:CInwek@duanemorris.com)>; Hill, Kimberly A. <[KAHill@duanemorris.com](mailto:KAHill@duanemorris.com)>  
**Subject:** [EXTERNAL] RE: The Phillies v. H/E etc.: Discovery Schedule/Issues

-EXTERNAL MESSAGE-  
Paul,

Let's move service of contention interrogatories to July 3, with responses due on July 17<sup>th</sup>. I don't think 2 weeks response time should be a problem for either of us.

Let's move the deadline for the SJ pre-motions to July 27, just to give us a bit more time to consider the interrogatory responses, in case they are material to our respective SJ issues.

If the last day for deposing experts and finishing the H/E Rule 30(b)(6) deposition is July 10<sup>th</sup>, that

would make the last day of discovery that day, so let's pop in July 10<sup>th</sup> for that date.

For finishing the H/E deposition, let's do afternoon of July 2.

David

---

**From:** Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)>

**Sent:** Thursday, June 25, 2020 12:43 PM

**To:** Wolfsohn, David J. <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>; Marandola, Tyler R.

<[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo

<[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>

**Subject:** RE: The Phillies v. H/E etc.: Discovery Schedule/Issues

David,

Please see my proposed letter to the Court regarding scheduling. I have yellow highlighted changes I made to the schedule you proposed in your last email to address the continuation of Bonnie's 30(b) (6) deposition, and to add an outside date for all discovery, which I believe the Court will want to include in the scheduling order. Otherwise, it comports with what you proposed. Please advise if you consent. If I do not hear back from you by 4 pm today, or we cannot agree, I will delete the last part of the letter which indicates your consent, say you did not consent, and will attach our meet and confer email exchanges.

Paul



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**From:** Montclare, Paul

**Sent:** Wednesday, June 24, 2020 6:00 PM

**To:** 'Wolfsohn, David J.' <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>; 'Marandola, Tyler R.'

<[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo

<[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>

**Subject:** RE: The Phillies v. H/E etc.: Discovery Schedule/Issues

David,

Do you want me to draft a letter to Magistrate Judge Netburn addressing the schedule we generally agreed to below?

Also, when do you want to resume Bonnie deposition? Please advise as soon as possible.

Paul



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---

**From:** Montclare, Paul

**Sent:** Wednesday, June 17, 2020 4:58 PM

**To:** 'Wolfsohn, David J.' <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>; Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>

**Subject:** RE: The Phillies v. H/E etc.: Discovery Schedule/Issues

David,

We are generally in agreement about the schedule. See my redline comments below.

Regarding the Zung subpoena, we believe that the documents referred to in the Zung expert disclosure and the response to the subpoena more than satisfy Rule 26 expert disclosure requirements. The remaining documents to be produced pursuant to the subpoena are being processed for production and should be ready for production by the end of the week or Monday. After you receive the documents I am happy to meet and confer regarding the adequacy of Mr. Zung's expert document production.

Also, we should meet and confer regarding the requested depositions of Sapp and Carfagno. As I mentioned in my prior email, Mr. Brandreth at his 30(b)(6) deposition was admittedly not prepared to discuss the creative contributions of either Sapp or Carfagno to the design of P-2, which was a specific 30(b)(6) topic relating to important issues that were the subject of prior arguments addressed to the court. Let's meet and discuss both the Zung subpoena response and issues

relating to Sapp and Carfagno contributions early next week.

Meanwhile see my redline comments below so we can draft a joint scheduling letter to Judge Netburn ASAP.

Paul



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---

**From:** Wolfsohn, David J. <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>

**Sent:** Wednesday, June 17, 2020 3:22 PM

**To:** Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)>; Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>

**Subject:** [EXTERNAL] RE: The Phillies v. H/E etc.: Discovery Schedule/Issues

-EXTERNAL MESSAGE-

Paul,

As I explained to you, I've been waiting to see what Mr. Zung would be producing in response to the subpoena before agreeing to expert deposition deadlines. My thinking is that, if we have to conduct motion practice over that subpoena, that would delay the taking of the two expert depositions until after Judge Netburn can resolve the parties' dispute.

We received your objections yesterday and believe they are quite improper, but you also say you will be producing documents, so I will await their production as well as meet-and-confer discussion before filing a motion regarding Mr. Zung's subpoena. (I'm assuming the documents will be produced this week?).

Your proposal to take more lay depositions is improper given that fact discovery ended on April 27<sup>th</sup>, with the exception of our agreement that you could conduct the MLB deposition after that deadline

and the remaining Phillies Rule 30(b)(6) topics, and the Court ruling that we could take the H/E Rule 30(b)(6) deposition, which you had opposed.

With regard to damages, I sent you a formal letter on the subject, which updates our initial disclosures.

Your other comments about the stipulations etc. are vague and I don't know what, specifically, you are referring to. I would be happy to respond to any specific items you think you're still missing.

Here's my counterproposal on the schedule:

**A. Expert Disclosure**

1. **Expert depositions of Defendants' two designated Experts** will be concluded **no later than July 10, 2020**, on dates to be agreed. Provided, however, that if The Phillies requests the Court's assistance with regard to the documents to be produced in response to the subpoena on Mr. Zung, The Phillies may take the ~~two~~ expert depositions after the Court's decision on that issue, and, if the Court orders the production of additional documents, The Phillies may have a reasonable time after the receipt of those documents to take the depositions.
2. **The Plaintiff will not designate experts in this case.**

- . The last day for **Expert Discovery will be July 10<sup>th</sup>, 2020, subject to the caveat in paragraph 1 above.**

- C. Contention interrogatories**, if any, to be **exchanged on June 26, 2020 with Responses due July 17, 2020**

- D. Deadline to submit MSJ Letters will be July 24, 2020**

In addition, nothing in this proposed schedule should be construed to waive or affect any rights or defenses that the Defendants' may have as a result of the passing of the effective date of the Termination Notice. Nor will it preclude Defendants from seeking an order from the Court regarding the depositions of Sapp and Carfagno, if the parties cannot reach an agreement as to these potential depositions.

Best,

David



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